In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 927

PAUL W. PANCZKO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of knowingly possessing two United States mail keys with the intent to unlawfully and improperly use and otherwise dispose of them, in violation of 18 U.S.C. 1704. He was sentenced to imprisonment for ten years.

The evidence [1] showed that, on April 11, 1963, petitioner drove his automobile into the path of a squad

[1] We are filing with the Clerk the transcript of proceedings.

car, impeding pursuit of a stolen truck (Tr. 365-366, 369-370). After the police pulled up next to him, petitioner dropped two keys from his automobile. They were discovered by one of a group of boys who witnessed the occurrence. Asked if the keys belonged to him, petitioner accepted them, responding "Yes, thanks" (Tr. 24-25, 131, 142-144, 181-183, 366-367). Shortly thereafter, another boy found the keys on the grass in the area of petitioner's automobile, and they were again returned to petitioner. After petitioner was taken to the police station, a telephone call summoned an officer back to the scene to pick up the keys, which had been found on the grass for the third time. (Tr. 26-27, 261, 281, 349-350, 358). The keys were brought back to the station and given to the local chief of police (Tr. 350). An hour and a half later, a police lieutenant turned them over to Postal Inspector Jacobs (Tr. 394). On questioning, petitioner told Inspector Jacobs that he had never seen the keys before (Tr. 397-398). The keys were introduced into evidence (Gov. Ex. 1) and identified as a set of mail-carrier keys stolen from the Wicker Park Postal Station in December 1962 (Tr. 299-318, 324-332).[2] The government introduced the supporting testimony of all the individuals who had handled the keys except that of the police lieutenant and the police chief (Tr. 28-29, 143-144, 258, 281-282, 350).

The court of appeals reversed the conviction and remanded the case for a new trial on the ground that

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[2] The keys would open most of the corner mail boxes, depository boxes and storage boxes in the city of Chicago (Tr. 339).

the trial court erred in permitting the jury to disband overnight during its deliberations (Pet. App. 1-6). The court also held that the testimony of the police chief and police lieutenant were necessary because "the handling of the keys allegedly thrown away by defendant should be traced by an unbroken chain of evidence" (Pet. App. 7).

1. Petitioner seeks further review urging that the court of appeals should have ordered a dismissal of the indictment rather than a new trial.[3] The statute (18 U.S.C. 1704) upon which the indictment was based, he contends, is unconstitutionally vague.[4] It is commonly known that tampering with the mails is a serious matter. Even those who gain lawful access

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[3] He also asserts (Pet. 6-7) that he was denied due process because the opinion of the Seventh Circuit did not contain a discussion of this issue. The court of appeals doubtless found the question not worthy of discussion. Its order affirmed the trial court on this point, just as the conviction might have been affirmed by order without opinion.

[4] 18 U.S.C. 1704 provides in pertinent part:

> "Whoever steals, purloins, embezzles, or obtains by false pretense any key suited to any lock adopted by the Post Office Department and in use on any of the mails or bags thereof, or any key to any lock box, lock drawer, or other authorized receptacle for the deposit or delivery of mail matter; or
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> "Whoever knowingly and unlawfully makes, forges, or counterfeits any such key, or possesses any such mail lock or key with the intent unlawfully or improperly to use, sell, or otherwise dispose of the same, or to cause the same to be unlawfully or improperly used, sold, or otherwise disposed of * * * *
>
> "Shall be fined not more than $500 or imprisoned not more than ten years, or both."

to mail receptacles or depositories are aware that they must act in a manner consistent with protection of the mails and in accordance with postal regulations. Section 1704 merely proscribes the possession of a key to any receptacle for the deposit of mail "with the intent unlawfully or improperly to use, sell or otherwise dispose of the same." It gives fair warning to an individual who knowingly obtains a postal key that any intentional unauthorized use or disposition of it is prohibited. "Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed." *United States* v. *National Dairy Corp.*, 372 U.S. 29, 32-33. See, also, *United States* v. *Harriss*, 347 U.S. 612, 617. Tested by that standard, Section 1704 is clearly valid.

Similar reasoning counters petitioner's argument (Pet. 10-14) that the indictment does not sufficiently charge the offense. The indictment sets forth the elements of the crime, the statute alleged to have been violated, and the serial numbers of the mail keys. It thus contains sufficient detail to protect petitioner from double jeopardy and to enable him to prepare his defense. Further facts come within the scope of a bill of particulars.

2. Petitioner's suggestion (Pet. 7-10) that a second trial after his successful appeal would put him in double jeopardy is of course contrary to long settled doctrine. Even if the court of appeals had determined that the evidence was insufficient to support petitioner's conviction, it could properly have ordered a new

trial. *Bryan* v. *United States*, 338 U.S. 552; *Forman* v. *United States*, 361 U.S. 416, 425. The holding of the Seventh Circuit, however, did not go to lack of evidence; at most, it found error in the trial court's admission of the keys because they were not authenticated by a showing of an unbroken chain of custody. Had the trial judge himself excluded the keys on that theory, the government would have had the opportunity to call additional witnesses to lay the foundation for admission of the keys.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
PAUL C. SUMMITT,
Attorneys.

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